IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

CRP.No. 941 of 2007()

EP 172/03 in OS.562/1997 of ADDL.M.C.,KOTTAYAM

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REVN. PETITIONER: JUDGMENT DEBTOR/DEFENDANT

M.C.ANILKUMAR, MUZHUKKATTU KALAYIL
SOUTH MANORAMA, KOTTAYAM.

BY ADV. SRI.JOSEKUTTY MATHEW

RESPONDENT: DECREE HOLDER/PLAINTIFF

KUNNATHUKALATHIL FINANCIERS
KOTTAYAM, REPRESENTED BY ITS PARTNER
K.V.VISWANATHAN, KUNNATHUKALATHIL,
KUMARAKOM VILLAGE.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 30/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.Krishnan, J.

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C.R.P.No.941 of 2007

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Dated this the 30th day of October, 2007.

ORDER

This revision petition is preferred against the order of the Munsiff, Kottayam in E.P.No.172 of 2003 in O.S.No.562 of 1997. Judgment debtor is aggrieved by the decision of the court below regarding means and has preferred this revision petition. A reading of the order of the learned Munsiff would reveal that she was not satisfied with the evidence. That is why she had stated that "Except the oral testimony there is no evidence to corroborate this version." But later the learned Munsiff jumps to the conclusion that being a man aged only 50 years, who is capable of doing work and that he had disposed of the property in 1999 for Rs.3,50,000/- means has to be presumed and therefore ordered arrest. It is strictly not in conformity with the mandate of Section 51 of C.P.C. The court has to satisfy itself that the judgment debtor after the decree has had the means to

pay and was evading payment deliberately to order arrest. Therefore, I think, a re-look into the matter is inevitable.

2. Therefore, the order under challenge is set aside and the matter is remitted back to the Executing Court for fresh consideration and liberty is given to the decree holder as well as the judgment debtor to adduce further evidence in support of their respective contentions and the court bearing the principles in mind when arrest can be ordered decide the issue and pass appropriate orders. The revision petitioner shall appear before the court on 3.12.2007 and on that day the court may issue notice to the decree holder to appear and thereafter proceed with the matter.

Civil Revision Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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